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14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA

17 U.S. EQUAL EMPLOYMENT OPPORTUNITY
18 COMMISSION,

19 Plaintiff,

20 and

21 AYESHA FAIZ,

22 Plaintiff-Intervenor,

23 vs.

24 FIDELITY HOME ENERGY, INC., NORCAL
25 HOME SYSTEMS, INC., and Bradley Smith, an
26 Individual.

27 Defendants.

Case No.: 4:19-cv-01231-JSW

FIRST AMENDED COMPLAINT

CIVIL RIGHTS – EMPLOYMENT
DISCRIMINATION

JURY TRIAL DEMAND

NATURE OF THE ACTION

28 The United States Equal Employment Opportunity Commission brings this action under Title
29 VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful
30 employment practices on the basis of national origin and to provide appropriate relief to Charging
31 Party Ayesha Faiz who was adversely affected by such practices. As alleged below, Fidelity Home

1 Energy, Inc. (Fidelity) subjected Ms. Faiz to a hostile work environment based on her Afghan
2 national origin and constructively terminated her employment.

3 Plaintiff EEOC also brings this action against Defendant NorCal Home Systems, Inc.
4 (NorCal), which became the successor entity to Fidelity on or around September 5, 2019. Plaintiff
5 EEOC adds NorCal to this lawsuit pursuant to Fed.R.Civ.P. 19(a)(1)(A), Fed.R.Civ.P. 15 and
6 Fed.R.Civ.P. 65(d) in order to secure appropriate monetary and injunctive relief.

7 **JURISDICTION AND VENUE**

8 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
9 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and (3) of Title VII of the
10 Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000e-5(f)(1) and (3) and §102 of the
11 Civil Rights Act of 1991, 42 U.S.C. §1981a.

12 2. Venue is proper in the United States District Court for the Northern District of
13 California because the alleged unlawful employment practices were committed within the City of San
14 Leandro and the County of Alameda.

15 **INTRADISTRICT ASSIGNMENT**

16 3. This action is appropriate for assignment to the Oakland Division of this Court because
17 the unlawful employment practices alleged were committed in Alameda County, which is within the
18 jurisdiction of the Oakland Division.

19 **PARTIES**

20 4. Plaintiff, the Equal Employment Opportunity Commission (EEOC), is the agency of
21 the United States of America charged with the administration, interpretation, and enforcement of Title
22 VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

23 5. At all relevant times until at least September 5, 2019, Defendant, Fidelity Home
24 Energy, Inc. (Fidelity) was continuously a California corporation doing business selling and installing
25 solar panels and other energy efficient products in the State of California and the City of San Leandro,
26 and continuously had at least 15 employees.

27 6. At all relevant times until September 5, 2019, Defendant Fidelity was continuously an

1 employer engaged in an industry affecting commerce, within the meaning of §701(b), (g) and (h) of
2 Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

3 7. Upon information and belief, since at least September 5, 2019, Defendant, NorCal
4 Home Systems, Inc. (NorCal) has continuously been a California corporation doing business selling
5 and installing solar panels and other energy efficient products in the State of California and the cities
6 of San Leandro and Concord in Alameda County and/or Contra Costa County, respectively, and has
7 continuously had at least 15 employees.

8 8. Since at least September 5, 2019, NorCal has continuously been an employer engaged
9 in an industry affecting commerce, within the meaning of Sections 701(b), (g) and (h) of Title VII,
10 42 U.S.C. §§ 2000e(b), (g) and (h).

11 9. On September 26, 2019, Fidelity filed a Certificate of Dissolution with the California
12 Secretary of State.

13 10. NorCal was incorporated by former CEO of Fidelity, Bradley Smith, who became the
14 CEO for NorCal.

15 11. Upon information and belief, as of September 5, 2019, NorCal had acquired all of
16 Fidelity's goodwill, property and assets, including customer lists, customer files and business
17 records related to Fidelity's former business operations.

18 12. Upon information and belief, as of September 5, 2019, NorCal had acquired all of
19 Fidelity's ownership of and legal interests in all transferable permits, authorizations and licenses
20 related to Fidelity's former business operations.

21 13. Upon information and belief, since at least September 5, 2019, NorCal has employed
22 substantially the same employees as did Fidelity prior to September 5, 2019.

23 14. Up until mid-late September 2019, NorCal operated out of the same San Leandro
24 business address and facility as had Fidelity.

25 15. NorCal's website contains substantially the same information as did Fidelity's.

26 16. Since at least September 5, 2019, NorCal has sold and installed substantially the same
27 solar panels and energy efficient products as Fidelity.

1 17. At the time it acquired Fidelity's assets, property and personnel, NorCal had actual
2 notice of this lawsuit and/or the underlying Charge of Discrimination filed with the EEOC.

3 18. Since at least September 5, 2019, Fidelity has been unable to provide certain relief in
4 this lawsuit, including injunctive relief, monetary relief and other relief that would involve the
5 facilities, personnel and properties located at 2235 Polvorosa Ave., Ste. 230, San Leandro, CA
6 94577 and at 4085 Nelson Ave, Concord, CA 94520.

7 19. NorCal is liable in this matter under the principles of successor liability.

8 **ADMINISTRATIVE PROCEDURES**

9 20. More than 30 days before the filing of this lawsuit, Ayesha Faiz filed a timely charge
10 with the EEOC alleging that Fidelity violated Title VII.

11 21. On August 20, 2018, the EEOC issued to Fidelity a Determination for Ayesha Faiz's
12 charge finding reasonable cause to believe, *inter alia*, that Fidelity violated Title VII by subjecting
13 Ms. Faiz to harassment and constructive discharge based on her national origin. The EEOC invited
14 Fidelity to join in informal conciliation methods in a collective effort toward a just resolution of Ms.
15 Faiz's charge.

16 22. On August 28, 2018, the EEOC sent Fidelity a conciliation proposal outlining the terms
17 required for resolution of the charge and claims described in the Determination referenced in paragraph
18 21, above.

19 23. The Commission engaged in communications with Fidelity to provide Fidelity the
20 opportunity to remedy the discriminatory practices described in the Determination referenced in
21 paragraph 21, above.

22 24. The EEOC was unable to secure from Fidelity a conciliation agreement acceptable to
23 the EEOC.

24 25. By letter dated September 7, 2018, the EEOC notified Fidelity that the EEOC had
25 determined that further conciliation efforts would be futile or non-productive. The letter also informed
26 Fidelity that the EEOC would not make any further efforts to conciliate Ms. Faiz's charge.
27

1 if she was uncertain whether the lead was Middle Eastern or Indian. She showed Ms. Faiz how to
2 search the lead's name and view images of people with the same last name as a method to try to discern
3 the individual's national origin. When Ms. Tufano concluded that the individual was likely Middle
4 Eastern or Indian, she cancelled their appointment.

5 34. Ms. Faiz learned that Fidelity used its internal database to track leads based on their
6 ethnicity. Fidelity used an "Ethnicity" field to place leads on an internal Do Not Call list when their
7 names appeared to be Indian or Middle Eastern. Ms. Faiz also observed that Fidelity's employees
8 annotated database records for individuals who appeared to be Indian or Middle Eastern with
9 comments such as "Not Qualified" or "We Won't Run This" or "Indian Name!" Ms. Faiz also saw a
10 post-it note on an employee's computer that said, "No Indians."

11 35. Fidelity instructed Ms. Faiz to insert comments, such as "NQ" or "Not Qualified" in
12 database notes for leads that she knew the company did not want to pursue because they were likely
13 Middle Eastern or Indian. Fidelity also required Ms. Faiz to instruct subordinate telemarketers to
14 adhere to the discriminatory practice.

15 36. Ms. Faiz followed Fidelity's instructions and rejected leads of perceived Middle
16 Eastern or Indian descent, although she found the practice offensive. She was compelled to adhere to
17 the discriminatory policy almost daily.

18 37. Fidelity's practice of discriminating against Middle Eastern and Indian potential
19 customers caused Ms. Faiz considerable distress and anxiety, particularly since many of the people
20 targeted by the policy had last names shared by members of her own family and community.

21 38. Throughout her tenure, Ms. Faiz raised her concerns about and objections to the
22 discriminatory practice to multiple supervisors. Nevertheless, the practice persisted causing a
23 discriminatorily hostile work environment for Ms. Faiz.

24 39. The effect of the practices described in paragraphs 27 through 38 above has been to
25 deprive Ms. Faiz of equal employment opportunities and otherwise adversely affect her status as an
26 employee, because of her national origin, Afghan and Middle Eastern.

27 40. The unlawful employment practices described in paragraphs 27 through 38 above were

1 intentional.

2 41. The unlawful employment practices complained of in paragraphs 27 through 38 above
3 were done with malice or with reckless indifference to the federally protected rights of Ms. Faiz.

4 **Second Claim – Constructive Discharge**

5 42. The EEOC hereby incorporates the allegations of paragraphs 1 through 41 above as
6 though fully set forth herein.

7 43. Since the beginning of November 2015, and thereafter, Ms. Faiz endured a workplace
8 rife with discrimination directed toward Middle Eastern and Indian people. Almost daily, she was
9 required to adhere to a discriminatory practice that excluded customers of Middle Eastern and Indian
10 descent. She questioned multiple supervisors about the policy and complained about it. Her
11 complaints were futile. Fidelity continued to discriminate against Middle Eastern and Indian potential
12 customers.

13 44. Unable to continue working under discriminatory conditions, Ms. Faiz sent a text to
14 Fidelity on December 7, 2015 writing, in relevant part: “I’ve been really uncomfortable working [here]
15 knowing the company refuses to service middle easterners or Indians. . . It makes me sick to know
16 that we refuse to service a particular ethnicity of people. We literally go out of our way to single them
17 out.”

18 45. The acts of Fidelity described in paragraphs 42 through 44 above and the First Claim
19 for Relief made Ms. Faiz’s working conditions so intolerable that a reasonable person would have felt
20 compelled to resign. Ms. Faiz felt compelled to resign and was constructively discharged on
21 December 7, 2015.

22 46. The effect of the actions described in paragraphs 42 through 44 above has been to
23 deprive Ms. Faiz of equal employment opportunities and otherwise adversely affect her status as an
24 employee.

25 47. The unlawful employment practices complained of in paragraphs 42 through 44 above
26 were intentional.

27 48. The unlawful employment practices described in paragraphs 42 through 44 above were

done with malice or with reckless indifference to the federally protected rights of Ms. Faiz.

PRAYER FOR RELIEF

Wherefore, the EEOC respectfully requests that this Court:

49. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, successors, and all persons in active concert or participation with them, from creating, failing to prevent and failing to promptly correct an offensive, abusive, intimidating, and hostile work environment on the basis of national origin, and/or engaging in any other employment practice that discriminates on the basis of national origin.

50. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for workers of Afghan, Middle Eastern or Indian descent, and which eradicate the effects of their past and present unlawful employment practices.

51. Order Defendants to make whole Ms. Faiz, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of their unlawful employment practices, including but not limited to reinstatement of Ms. Faiz.

52. Order Defendants to make whole Ms. Faiz by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including job search expenses and medical expenses, in amounts to be determined at trial.

53. Order Defendants to make whole Ms. Faiz by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices described above, including inconvenience, pain and suffering, loss of enjoyment of life, anxiety, stress, and humiliation, in amounts to be determined at trial.

54. Order Defendants to pay Ms. Faiz punitive damages for their malicious and reckless conduct, as described above, in amounts to be determined at trial.

55. Grant such further relief as the Court deems necessary and proper in the public interest.

56. Award the EEOC its costs of this action.

JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by its First Amended Complaint.

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Dated: December 20, 2019

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